

## **REMARKS**

### **Claims**

Claims 4-7 and 20-22 are currently under examination with claims 18-19 withdrawn from consideration due to restriction/election. Claims 1-3 and 8-17 are cancelled without prejudice or disclaimer. Applicants reserve the right to file one or more continuation applications directed to the subject matter of these claims.

The allowability of claim 4 is gratefully acknowledged.

### **Claim amendments**

The claims have been amended to recite proper dependencies.

The amendment of claims 5 and 19 is supported by the disclosure contained in, for example, page 12, lines 7-15 of the originally-filed application.

It is respectfully submitted that the claim amendments do not raise new matter.

### **Restriction**

Applicants cordially urge the Examiner to withdraw the restriction requirement of claims 18 and 19 insofar as all the claims in the application involve related subject matter, for example, compounds of formula Ia, precursors thereof, and methods of making thereof. Moreover, inasmuch as the subject matter of claim 5 has been examined, it is cordially submitted that a search/examination of the withdrawn claims would not constitute undue burden. "If search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct invention." (Emphasis added.) M.P.E.P. 803.

Applicants' petition against the restriction requirement (filed; June 19, 2007) was prematurely deemed moot in view of the Examiner's partial withdrawal of the restriction requirement. However, a complete reversal of this requirement, as requested in the petition, has not been made. As such, Applicants reserve the right to request reconsideration of the petition if the requirement for restriction is maintained. However, in view of the aforementioned arguments and remarks, Applicants cordially request the Examiner to facilitate prosecution via withdrawal of the pending restriction requirement in its entirety.

The alleged requirement that Applicants "should amend the claims to read on the elected subject matter" is respectfully traversed since traversal of the restriction requirement was timely made and Applicants petition filed June 19, 2007 has not been fully considered. Withdrawal of the

objection is courteously requested.

### **Rejections under 35 U.S.C. §112, ¶1**

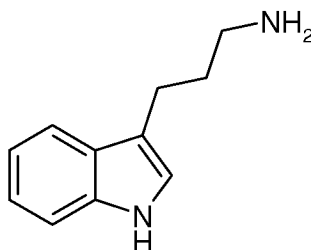
Claims 9–10 and 12–16 stand rejected under 35 U.S.C. § 112, ¶1 for allegedly failing to comply with the enablement requirement. The rejection is moot in view of the amendments. Applicants have cancelled the claims purely to facilitate prosecution. No agreement is implied. Moreover, the subject matter of these cancelled claims shall be pursued separately in a continuation application.

### **Rejections under 35 U.S.C. §103(a) over Halazy**

The PTO's allegation that the subject matter of claims 5-7 and 20–22 are rendered obvious by Halazy et al. (US 5,726,177) is respectfully traversed.

Applicants submit that the rejection is moot in view of the amendments. However, the following remarks are provided herein for clarity.

Halazy discloses indole-derived azylpiperazine compounds having a side group that is an analog of serotonin having the formula:



The compounds depicted in the Examples section of Halazy (see, Examples 1–13, 26–34 and 40–70 of USP'177) contain the aforementioned moiety. As such, the compounds of Halazy are serotonin analogs (see, col. 7, line 37 of Halazy). In Halazy, these serotonin-analog moieties are bridged to azylpiperazine groups via a bridging moiety. The azylpiperazine groups and the bridging moiety in Halazy are also structurally different from respective moieties of the presently claimed compounds. For example, Halazy's compounds contain a mandatory C<sub>2</sub>H<sub>5</sub>-NR<sup>5</sup>R<sup>6</sup> radical (with respect to the R<sup>4</sup> substituent) in the serotonin-derivative, as outlined *supra*. This moiety is not present in Applicants' compounds. Halazy also teaches the use of a carbonyl, SO<sub>2</sub> and/or oxo functionalized bridging moiety between the indole system and the piperazine ring (with respect to the X<sup>1</sup> substituent) and an optionally substituted mandatory phenyl moiety. The Office Action fails to present any evidence that the cited references, either solely or in combination, propose the change in structure as proposed by the Examiner. Absent such guidance, there can be no *prima facie* case for

obviousness. See *In re Grabiak* F.2d at 732, 226 USPQ at 872 (Fed. Cir. 1985). Moreover, even if such knowledge were derived from secondary sources, there is no reasonable way to arrive at the claimed compounds under US law. See e.g., *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed.Cir. 1992). Withdrawal of the rejection is respectfully requested.

In view of the above remarks, favorable reconsideration is courteously requested. If there are any remaining issues which could be expedited by a telephone conference, the Examiner is courteously invited to telephone counsel at the number indicated below.

The Commissioner is hereby authorized to charge any fees associated with this response to Deposit Account No. 13-3402.

Respectfully submitted,

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Attorney Docket No.: **MERCK-2932**

Date: August 18, 2008